

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LAMOS WAYNE STURGIS,

No. C 11-03667 SBA (PR)

Petitioner,

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL AND
EXTENDING TIME IN WHICH TO FILE
TRAVERSE**

v.

TERRI GONZALEZ, Acting Warden,

Respondent.

On May 31, 2012, Petitioner, who is currently out on parole, directed correspondence to the Court. (Docket no. 14.) He requests that an attorney be appointed to represent him in this matter. In particular, he states that he needs assistance in filing a traverse.

The Sixth Amendment right to counsel does not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require" and such person is financially unable to obtain representation. The decision to appoint counsel is within the discretion of the district court. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made appointment of counsel the exception rather than the rule by limiting it to: (1) capital cases; (2) cases that turn on substantial and

1 complex procedural, legal or mixed legal and factual questions; (3) cases involving uneducated or
2 mentally or physically impaired petitioners; (4) cases likely to require the assistance of experts either
3 in framing or in trying the claims; (5) cases in which petitioner is in no position to investigate crucial
4 facts; and (6) factually complex cases. See generally 1 J. Liebman & R. Hertz, Federal Habeas
5 Corpus Practice and Procedure § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only
6 when the circumstances of a particular case indicate that appointed counsel is necessary to prevent
7 due process violations. See Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th
8 Cir. 1965).


9 At this time, the Court is unable to determine whether the appointment of counsel is
10 mandated for Petitioner. Accordingly, the interests of justice do not require appointment of counsel,
11 and Petitioner's request is DENIED. This denial is without prejudice to the Court's sua sponte
12 reconsideration should the Court find an evidentiary hearing necessary following consideration of
13 the merits of Petitioner's claims.

14 Although the Court does not find that the appointment of counsel is necessary at this time, it
15 appears that Petitioner wishes to file a traverse, which is presently overdue. The Court hereby
16 GRANTS him an extension of time until **twenty-eight (28) days** from the date of this Order in
17 which to file a traverse.

18 This Order terminates Docket no. 14.

19 IT IS SO ORDERED.

20 Dated: 7/9/12

21 
22 SAUNDRA BROWN ARMSTRONG
23 UNITED STATES DISTRICT JUDGE
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 LAMOS WAYNE STURGIS,

5 Plaintiff,

6 v.

7 PEOPLE OF STATE OF CA et al,

8 Defendant.
9 _____/

Case Number: CV11-03667 SBA

CERTIFICATE OF SERVICE

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
11 Court, Northern District of California.

12 That on July 10, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
15 in the Clerk's office.

16 Lamos Wayne Sturgis
17 30 Silver Saddle Ct.
18 Pittsburg, CA 94565

19 Dated: July 10, 2012

20 Richard W. Wieking, Clerk
21 By: Lisa Clark, Deputy Clerk
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